

Senator LEAHY. I also want to thank the Chairman for moving down here. It was the right thing to do. It was something that, when it was suggested, we moved quickly. I applaud you for doing that and then moving out of our regular place. But I just wanted to note my applause of the Chairman for moving us down here as quickly as he did.

Chairman HATCH. Well, thank you, and I am very grateful to the Senate for scrambling and getting this room prepared and helping us to get this done in an efficient and quick manner.

Now, we will have one more statement, and then we are going to call on the witnesses, the three Circuit witnesses. We will finish with them before we call on the District Court witnesses. I know it is going to be a pain to wait for you District Court nominees, but that is the way it is going to have to be, and we will turn to our good friend and colleague, Senator DeWine.

PRESENTATION OF DEBORAH L. COOK AND JEFFREY S. SUTTON, NOMINEES TO BE CIRCUIT JUDGES FOR THE SIXTH CIRCUIT BY HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Well, thank you, Mr. Chairman. It is my pleasure, as a U.S. Senator from Ohio, to introduce to this Committee today two very distinguished Ohioans, who have been nominated by President Bush to serve on the Sixth Circuit Court of Appeals.

First, I would like to introduce to the Committee Justice Deborah Cook, who is from Akron, Ohio. Justice Cook currently is serving her second term as an Ohio Supreme Justice, a post she was first elected to in 1994.

Let me welcome to the Committee several people who are here to support Justice Cook. First, is her husband, Bob Linton. Bob, thank you very much for being with us today.

Let me also welcome Justice Cook's brother, Kevin Cook, and his wife Katerina, and their 8-year-old son Jordan, and 6-year-old Christina, as well as Justice Cook's sister, Susan Adgate, and her two children, Frankie and Audrey, as well as two of Justice Cook's judicial clerks, Shawn Judge and his wife Corie, and another judicial clerk, Amy Cadle.

Justice Cook is an excellent judge and a gracious and giving individual who has dedicated a great deal of her personal time and energy to helping the underprivileged.

First, let me give the members of the Committee a little bit about her work as a judge. Justice Cook has been an appellate judge for over 11 years—4 years on the Ohio Court of Appeals, over 7 years on the Ohio Supreme Court.

While Justice Cook was on the Court of Appeals, she participated in deciding over a thousand cases. Of the opinions that she wrote, she was reversed just six times. Of the cases in which she joined other judge's opinions, her appeals panel was reversed eight times. So, together, of course, that is a 1.4-percent reversal rate, and by any standards, that is a remarkable record.

Now, let us take a look at the statistics during her time on the Ohio Supreme Court. As we are all aware, few State Supreme Court cases are taken for review by the United States Supreme Court. The Ohio Supreme Court is certainly no exception to that

rule. But this statistic for the Ohio Supreme Court and for her decisions on that court is still worth considering.

During Justice Cook's time on the Ohio Supreme Court, the United States Supreme Court has reviewed five Ohio Supreme Court decisions. The U.S. Supreme Court has agreed with Justice Cook in all five of those cases. Let me repeat that. The United States Supreme Court has agreed with Justice Cook in all five of those cases.

Of those cases, one of those cases was simply a unanimous Ohio Supreme Court decision affirmed by the U.S. Supreme Court 8 to 1. But in the other four cases, Justice Cook had dissented in the underlying Ohio case. She was the dissenter, and in each of these four cases, the U.S. Supreme Court reversed—reversed—Ohio Supreme Court's majority opinion and reached the same conclusion—the same conclusion—as Justice Cook did.

Now, these were not all the close 5 to 4 decisions that we sometimes see in the U.S. Supreme Court. In a Fifth Amendment self-incrimination case, the Supreme Court sided with Justice Cook 9 to nothing. Another case went 8 to 1, again siding with Justice Cook's dissent.

So it is clear from these statistics that Justice Cook's decisions, when she was dissenting in these cases, was well-founded.

Mr. Chairman, members of this committee, another useful gauge of a sitting judge is the evaluation she gets from objective observers who watch the court on a day-to-day basis.

In Ohio, the major newspapers closely watch our High Court. After observing Justice Cook on the Ohio Supreme Court for a full 6-year term, Justice Cook was endorsed by all of the major newspapers in the State of Ohio for her 2000 reelection campaign. These newspapers included the Cleveland Plain Dealer, the Columbus Dispatch, the Cincinnati Inquirer, the Akron Beacon Journal, the Dayton Daily News, and the Toledo Blade.

Let me just say, as someone who has a lot of experience with these newspapers, that covers the entire political spectrum in the State of Ohio.

Since the election in the past few weeks, several Ohio papers have endorsed her nomination to the Sixth Circuit. The Cincinnati Post wrote on January 8th of this year, and I quote, Mr. Chairman, "Cook is serving her second term on the Ohio Supreme Court, where she has been a pillar of stability and good sense. Her role on that court, one, which in the last few years has repeatedly marched on 4-to-3 votes into the realm of policy-making, has often been writing sensible dissents."

On December 29th, 2002, insisting that the Judiciary Committee act on Justice Cook, the Cleveland Plain Dealer wrote, and I quote, "Cook is a thoughtful, mature jurist, perhaps the brightest on the State's highest court."

The Akron Beacon Journal wrote on January 6th, 2003, and I quote, "Those who watch the Ohio court know Cook is no ideologue. She has been a voice of restraint in opposition to a court majority determined to chart an aggressive course, acting as problem-solvers more than jurists. In Deborah Cook, they have a judge most deserving of confirmation, one dedicated to judicial restraint."

And the Columbus Dispatch wrote on January 6th, 2003, and I quote, "Cook's record is one of continuing achievement. Since 1996, she has served on the Ohio Supreme Court, where she has distinguished herself as a careful jurist, with a profound respect for judicial restraint and the separation of powers between the three branches of Government."

Now, Mr. Chairman, these quotes are from papers across the political spectrum, all of which endorsed Justice Cook. As these comments make clear, Justice Cook is a talented, serious judge, who works diligently to follow the law. At the same time, she also dedicates, though, a great deal of her time to volunteer work and community service.

Justice Cook has served on the United Way Board of Trustees, the Volunteer Center Board of Trustees, the Akron School of Law Board of Trustees, and the Women's Network Board of Directors. She was named Woman of the Year in 1991 by the Women's Network. She has volunteered for the Safe Landing Shelter and for Mobile Meals, and she has served as a board member, and then president, of the Akron Volunteer Center.

Furthermore, Mr. Chairman, Justice Cook has served as a commissioner on the Ohio Commission for Dispute Resolution and Conflict Management, where she focused on, among other things, truancy, mediation for disadvantaged students.

She has chaired Ohio's Commission on Public Legal Education and has taught continuing legal education seminars on oral argument and brief writing.

I find it, Mr. Chairman, remarkable that Justice Cook has found time for this level of commitment to her community, and I have yet to describe the most amazing, to me, commitment Justice Cook has made helping the underprivileged in Ohio. Like many of us, Justice Cook believes that the ticket out of poverty is a quality education, and over the years Justice Cook, and her husband, in their everyday lives, have come across hardworking young people who are making an effort to improve their lives through education.

Tasha Smith is one of those people. Justice Cook met her when she was struggling to put herself through college at Kent State by working as a waitress. Justice Cook assisted her with tuition for several years, and today this woman is in her final year of nursing school, carrying a 3.8 grade point average.

Tara King is another of these students. With Justice Cook's help, she recently graduated from the University of Akron, and she just enrolled in graduate school at Cleveland State.

After helping several students in this manner, Justice Cook and her husband decided they should structure their assistance so they could help more young people early on in their education. Four years ago, they started the College Scholars Program with a group of 20 disadvantaged third-graders from an inner-city school. The students were selected to participate based on teacher recommendations, financial need and level of family support.

Justice Cook matched each of the students with a mentor in the community. The students met with their mentors weekly and participated in other program activities. If the students maintained good grades and conduct through secondary school, Justice Cook and her husband will pay for 4 years of their tuition in any public

university in Ohio. Let me repeat that. Justice Cook is going to pay for 4 years of college tuition for 20—20—disadvantaged children.

Now, Mr. Chairman, members of the committee, these activities demonstrate a commitment to the community and dedication to helping the disadvantaged that we would like to see in everyone, and these are qualities that help make Justice Deborah Cook a fine judge.

Now, Mr. Chairman, members of the committee, let me turn my attention to another one of our fine nominees from Ohio, Mr. Jeff Sutton. Mr. Sutton, who is from Columbus, is here today with his family. I would like to introduce the Committee to his wife Peggy and their three children, Margaret, who is 6 years old; John, who is 9 years old; and Nathaniel, who just today is turning 11. Happy birthday, Nathaniel.

I would like also to welcome Jeff's parents, Nancy and David Sutton, his sister Amy, his brothers Craig and Matt, and several additional friends and family. We are very pleased that all of you could be here on this very important day.

Mr. Chairman, Mr. Sutton's legal and life experiences are extensive. A couple of years ago, before high school, his father took over—a couple of years before high school, his father took over a boarding school for children with severe cerebral palsy. Over 6 years, Mr. Sutton spent much of his time around the school doing odd jobs for his father. He was deeply affected by this experience and by the interactions that he had with these students during his formative years. It reinforced what he had been taught by his parents; that serving others is an important calling and virtue.

Mr. Sutton attended Williams College, where he was a layman scholar and varsity soccer player. He graduated with honors in history, and after college, from 1985 to 1987, Mr. Sutton was a seventh grade geography teacher and tenth grade history teacher, as well as the high school varsity soccer coach and the middle school baseball coach.

From there, he went on to law school and graduated first in his class from the Ohio State University College of Law, where he served as issue planning editor of the Law Review.

Mr. Sutton clerked for Judge Thomas Meskill on the U.S. Court of Appeals for the Second Circuit. He clerked for two U.S. Supreme Court Justices, retired Justice Powell and Justice Scalia.

From 1995 to 1998, Mr. Sutton was the State solicitor of Ohio, which is the State's top appellate lawyer. During this service, the National Association of Attorneys General presented him with the Best Brief Award for practicing in the U.S. Supreme Court, a recognition he received an unprecedented 4 years in a row.

Mr. Sutton is currently a partner in the Columbus law firm of Jones, Day, Reavis and Pogue. He is a member of the Columbus Bar Association, the Ohio Bar Association, and the American Bar Association. He has also been an adjunct professor of law at the Ohio State University College of Law since 1994, where he teaches seminars on Federal and State constitutional law.

Recently, Mr. Chairman, the American Lawyer rated him one of its 45 under 45; that is, they ranked him, named him as one of the 45 top lawyers in the country under the age of 45.

He has appeared frequently in court, having argued 12 cases before the United States Supreme Court, where he has a 9 and 2 record, with one case still pending. In the Supreme Court's 2000 to 2001 term, Mr. Sutton argued four cases. That is more cases than any other private practitioners in the entire country. Can we imagine preparing to argue one case before the Supreme Court, much less than four? And to no one's surprise, Jeff Sutton won all four.

Mr. Sutton also has argued 12 cases before the Supreme Court, 6 cases before various U.S. Courts of Appeal, and numerous cases before the State and Federal trial courts. Over the years, Mr. Sutton has been the lawyer for a range of clients on a wide range of issues. Some of these cases are quite well-known. For example, he represented the State of Ohio in *Flores v. City of Berne*; the State of Florida in *Kimel v. Florida Board of Regents*; and the State of Alabama in *University of Alabama v. Garrett*.

But, Mr. Chairman, I would like to tell the Committee about some less-well-known cases. He represented, as my colleague Senator Voinovich has indicated, Cheryl Fischer, a blind woman who was denied admission to a State-run medical school in Ohio because of her disability.

He represented the National Coalition of Students with Disabilities in a lawsuit, alleging Ohio University was violating the Federal motor voter law by failing to provide their disabled students with voter registration materials.

He filed an amicus brief in the Ohio Supreme Court, defending—defending—Ohio's hate crime statute, and he filed it on behalf of the NAACP, the Anti-Defamation League and other civil rights groups.

He defended Ohio's minority set-aside statute against constitutional attack.

He filed an amicus brief in the Sixth Circuit on behalf of the Center for the Prevention of Hand Gun Violence, defending—defending—an assault weapon ordinance.

He represented two capital inmates in State and Federal court, and he represented an inmate who brought a prisoners' rights lawsuit in the United States Supreme Court.

Mr. Chairman, I am sure we will have the opportunity to go through these cases in some detail and many other cases, but I am confident the Committee will be impressed by Mr. Sutton's ability in representing these various clients in these cases.

Like Justice Cook, and consistent with his upbringing, Mr. Sutton has found an extraordinary amount of time to give back to his community. Between a demanding law practice and time with his very young family, he serves on the Board of Trustees of the Equal Justice Foundation, a nonprofit provider of legal services to disadvantaged individuals and groups, including the disabled. He has spent considerable time doing pro bono legal work, averaging between 100 and 200 hours per year.

He is an elder and deacon in the Presbyterian Church, as well as a Sunday School teacher. He participates in numerous other community activities, including I Know I Can, which provides college scholarships to inner-city children, and Pro Musica, a chamber music organization.

He also coaches soccer and basketball teams.

Finally, Mr. Chairman, I was struck by something I once read that Mr. Sutton wrote in the Columbus Dispatch about former Supreme Court Justice Powell. In describing Justice Powell's practical voice on the court, he wrote the following, and I quote, "Justice Powell never lost sight of the context in which each decision was made and the people, the people, that it would affect. He believed in people more than ideas and experience, and experience, more than ideology, and in the end embraced a judicial pragmatism that served the country well."

Mr. Chairman, I believe this same description applies to Mr. Sutton. He will approach the bench in the same pragmatic, tempered and very thoughtful way.

I appreciate the chairman's time, and I yield the floor.

Chairman HATCH. Well, thank you. Thank you, Senator.

We will call the three nominees, Hon. Deborah Cook Mr. John Roberts and Professor Jeffrey Sutton to the witness table, and if you will stand and raise your right hands.

Do you solemnly agree to tell the truth, the whole truth and nothing but the truth, so you help you God?

Justice COOK. I do.

Mr. ROBERTS. I do.

Mr. SUTTON. I do.

Chairman HATCH. We will start with you, Justice Cook. If you have any opening statement, we would like you to introduce your families again and those who are with you. We are just delighted to have you here, and we look forward to completing this hearing.

STATEMENT OF DEBORAH L. COOK, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Justice COOK. Thank you, Mr. Chairman.

My family has been introduced, but I would like to introduce one additional friend who has appeared today with me, and it is Mr. Robin Weaver. Robin is a partner with the international firm of Squires, Sander and Dempsey. He is in the home office in Cleveland, and Robin also serves as the president of the Cleveland Bar Association, and he was kind enough to come today, and I wish to thank him and introduce him to the committee.

Chairman HATCH. We are delighted to have you hear, Mr. Weaver. I have heard of you, and we are very privileged to have you in our audience today.

Justice COOK. Thank you, Mr. Chairman.

Chairman HATCH. Do you care to make any statement?

Justice COOK. I won't reintroduce my family.

Chairman HATCH. That will be fine.

Justice COOK. They were good enough to already stand.

Chairman HATCH. Do you have a statement?

Justice COOK. I have no statement.

Chairman HATCH. That will be fine.

Justice COOK. Thank you, Mr. Chairman.

Chairman HATCH. Mr. Roberts, we will turn to you.